

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

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|--|---|------------------------------------|
| THOMAS DOUGLAS, as Administrator of the |) | |
| Estate of SEBERA GAYLE DOUGLAS, |) | |
| deceased, |) | |
| |) | |
| Plaintiff, |) | Civ. Action No. 2:06-CV-188-WKW |
| |) | |
| |) | |
| v. |) | (Removed from the Circuit Court of |
| |) | Covington County, Alabama) |
| |) | |
| TMA FOREST PRODUCTS GROUP, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| |) | |

**DEFENDANTS' JOINT RESPONSE TO
PLAINTIFFS' PROPOSED EXPEDITED DEPOSITIONS**

Plaintiffs' counsel have requested permission to take expedited depositions of six-named Plaintiffs and four fact witnesses in this and related cases. By order dated May 25, 2006, this Court instructed Defendants to file any objections to Plaintiffs' proposed expedited depositions on or before June 2, 2006. Defendants have significant concerns, which are described below, regarding the proposed expedited depositions.

Counsel for the parties are presently conferring on a proposal to address Defendants' concerns and have tentatively reached an agreement on an expedited deposition process. Defendants are hopeful that a mutually-agreed upon process will be finalized within the next few days and will promptly advise the Court of same. In the event the discussions between counsel are not successful, however, Defendants

respectfully request an opportunity, if needed, to submit formal written objections to the Court.

DEFENDANTS' CONCERNS

1. Plaintiffs' counsel requests preservation depositions for six named Plaintiffs: Gail Tatum, Kandy Creech, Dorothy DeVaughn, Deborah Ann Reynolds, Sherri Davis, and Sandra Cobb. If these Plaintiffs cannot testify at later depositions or trial, the proposed preservation depositions will be Defendants' only opportunity to examine them about their claims, including the time, places and circumstances of each Plaintiff's alleged exposure(s) to chemicals associated with the Facility and the resulting illness or injury. Consequently, Defendants request signed releases authorizing Defendants to obtain relevant records relating to each Plaintiff (or Decedent), including medical, employment, disability, and social security records. In addition, Defendants ask that they be provided any written or recorded statements from these Plaintiffs previously obtained by Plaintiffs' counsel.

2. Plaintiffs' counsel request preservation depositions for four fact witnesses: Roy Ezell, John "Buck" Roberts, Jackie Partridge, and Carlton Dukes. Again, the proposed preservation depositions will be Defendants' only opportunity to examine these witnesses if there are unavailable later in the litigation. At least three, and possibly all four, of these fact witnesses are former Facility employees. Defendants are aware, for instance, that Mr. Ezell's employment at the Facility may date back more than 50 years. Similarly, Mr. Roberts' tenure seems to have been lengthy, as his prior affidavit states that he "was a millwright there for over 21 years." *See* Pl. Opp. to Motions to Dismiss,

Ex. A. Mr. Partridge likewise claims to have worked at the Facility “continuously from March of 1976 until January of 1999.” *Id.*, Ex. C.

The proposed preservation depositions for these witnesses therefore plainly implicate most of the Facility’s operational history Plaintiffs contend is at issue in this litigation. Over the almost five decades of the Facility’s operations, the Alabama Department of Environmental Management and the U.S. Environmental Protection Agency maintained voluminous documents in the ordinary course of business relating to the Facility. These and other documents relating to Facility operations will be extremely important to the examination of Mr. Ezell, Mr. Roberts, Mr. Partridge, and possibly Mr. Dukes. Defendants therefore request reasonable time to review these agency documents for pertinent information for these examinations, as well as the opportunity to obtain and review any written or recorded statements from these witnesses previously obtained by Plaintiffs’ counsel.

3. Because Defendants may be forced to rely at trial upon testimony taken during the preservation depositions, Defendants request the opportunity to take discovery depositions of each witness shortly in advance of the preservation depositions. Defendants recognize that such discovery depositions may necessarily be abbreviated relative to the normal discovery deposition process. Nonetheless, Defendants are concerned that they cannot reasonably be required to cross-examine the witnesses for trial purposes in a preservation deposition without some advance opportunity to gather information in a discovery deposition setting.

Respectfully submitted this 2nd day of June, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 2006, I filed the foregoing via the CM/ECF system which will send notice of said filing to the following:

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